



**Rules and Ancillary Document Review Checklist**  
**(This form must be filled out electronically.)**

All responses should be in **bold** format.

Document Reviewed (include title):

**ETA 447.04.211 Rentals within and without Washington**  
**ETA 135.04.211 Deductibility of Repair and Maintenance Costs of Leased Property**  
**ETA 158.08.211 Deduction of Finance Charges from Lease Payments**  
**ETA 337.08.211 Lease Cancellation Payment**  
**ETA 357.04.211 Bailments: Handling and Cleaning Charges**

Date last adopted:

**ETA 447      March 17, 1972**  
**ETA 135      August 12, 1966**  
**ETA 158      August 19, 1966**  
**ETA 337      August 11, 1969**  
**ETA 357      June 5, 1970**

Reviewer:      **JoAnne Gordon**

Date review completed: **September 27, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request).    YES ☐    NO ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

**ETA 135 explains that a lessor cannot deduct costs from gross income lessee-paid maintenance and repair costs for which the lessor is contractually liable.**

**ETA 158 explains that a lease with an option to purchase is subject to sales tax on the full selling price without any deduction for interest.**

**ETA 337 explains that a negotiated settlement agreement arising out of a mutually agreed upon lease termination represents consideration by effectively decreasing the lease period and increasing the rental payments for the actual period of use.**

**ETA 357 explains that amounts billed to bailees by bailors for handling items remain taxable under the service and other activities classification even though the items were**



served as necessary. The true object was the service activity while the retail aspect, cleaning, was incidental to the handling service provided by the bailor.

ETA 447 discusses the application of business and occupation tax and retail sales tax to leases when the property is used both inside and outside the state of Washington.

**2. Need:**

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

**Except for ETA 357, these ETAs provide tax-reporting guidance that is not otherwise provided in the statutes or other documents issued by the Department.**

ETA 357 refers to bailment, however, it fails to make clear how the fact pattern relates to bailment. The ETA presents a fact pattern whereby the retail activity, cleaning, is incidental to the services performed, maintenance of a film library for firms owning various. Thus, the ETA uses a true object test to establish applicable tax treatment.

**3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete** Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

**(a)**

YES	NO	
		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should



		be completed for each and submitted with this completed form.)
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
X		Should this ancillary document be incorporated into a rule?
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**Except for ETA 357, the information provided in these ETAs should be incorporated into WAC 458-20-211.**

#### 4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**These ETAs are clear , concise, and provide the results they were originally intended to provide. With the exception of ETA 357, the information provided in these ETAs can be more effective if incorporated into a revised and more comprehensive WAC 458-20-211.**

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**RCW 34.05.230 encourages state agencies to advise the public of current opinions and approaches through interpretative and policy statements (e.g., ETAs).**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

**The Department is responsible for administering the tax laws in the situations addressed by these ETAs.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**These are interpretive statements that do not impose administrative burdens on taxpayers that are not already imposed by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
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## Reviewing Rules and Ancillary Documents

<b>X</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>X</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>X</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?



Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following apply to charges for rentals of tangible personal property:**

**RCW 82.04.040¾ “Sale,” “casual sale;”**

**RCW 82.04.050¾ “Sale at retail,” “retail sale;”**

**RCW 82.04.070¾ “Gross proceeds of sale;”**

**RCW 82.04.080¾ “Gross income of the business;”**

**RCW 82.04.190¾ “Consumer;”**

**RCW 82.08.010¾ Definitions**

**RCW 82.08.020¾ “Tax imposed¾”Retail sales . . . ;”**

**RCW 82.12.010¾ Definitions**

**RCW 82.12.020¾ “Use tax imposed;”**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

**ETA 158.08.211 Det. No. 87-352, 4 WTD 289 (1987) discusses vehicle leases that were actually installment sales rather than leases as characterized by the taxpayer. Determination issued before 1996, when a to WAC 458-20-211 incorporated a discussion of the difference between a true lease and a financing lease.**

**ETA 337.08.211 Det. No. 97-208, 18 WTD 183 (1999) discusses an early termination of a vehicle lease, allowing for the proportionate adjustment of the retail sales tax paid when proceeds from the subsequent sale of the property exceeds the residual value and the lessee receives a refund. While the determination discusses the ETA, it applies it in an opposite manner.**

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



**10. Review Recommendation:**

- ☐ Amend
- ☐ Repeal
- ☒ Leave as is **ETA 357 only**
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☒ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

**With the exception of ETA 357, these ETAs provide tax-reporting information that should be incorporated into WAC 458-20-211 (Leases or rentals of tangible personal property, bailments).**

**ETA 357 applies a true object test to determine when retail activities are incidentally performed during the rendition of a service. Until such time as the ETA can be incorporated in a more applicable rule, it should remain as is.**

**11. Manager action:**    Date: \_\_\_\_\_

- ☐ Reviewed recommendation      ☐ Accepted recommendation
- ☐ Returned for further action

Comments: